

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARL H. PLUMB,

Defendant.

NO. CV-06-3068-AMJ

ORDER ADOPTING REPORT AND
RECOMMENDATION

Magistrate Judge John L. Weinberg filed a report and recommendation on October 26, 2007, recommending that Plaintiff's motion for Summary Judgment be granted, judgment be rendered in favor of Plaintiff and against Defendant for amounts described in the report and recommendation, and Defendant's cross-motion for summary judgment be dismissed as moot. (Ct. Rec. 67).

On November 7, 2007, Defendant filed a timely objection to the report and recommendation. (Ct. Rec. 69). Plaintiff did not file an objection to the report and recommendation or otherwise respond to Defendant's objections.

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1 A. Student Loans

2 _____ Defendant's objection asserts that there is a genuine dispute
3 that he borrowed \$17,000.00 in student loans between 1991 and
4 1993. (Ct. Rec. 69 at 1). Defendant challenges Plaintiff's
5 documentary evidence, the accuracy of the Complaint and the
6 accuracy of Plaintiff's record. (Ct. Rec. 69 at 1-3).

7 Despite Defendant's objections, it is apparent that
8 Magistrate Judge Weinberg appropriately analyzed the record in
9 this case. Plaintiff has met its burden of demonstrating, by
10 business records, sworn declarations and Defendant's deposition
11 testimony, that Defendant executed three promissory notes in
12 October of 1991, December of 1992, and September of 1993 to borrow
13 a total amount of \$17,000.00. Defendant merely attacks the weight
14 of Plaintiff's evidence and claims to have no independent
15 recollection or documentation of the events at issue.¹ (Ct. Rec.
16 46; Ct. Rec. 37-2, Att. A at 7-104; Ct. Rec. 69 at 1-3).

17 The undisputed facts reveal that, in the early 1990's,
18 Defendant attended CWU and obtained a master's degree in
19 education. (Ct. Rec. 37, ¶ 1). Defendant has acknowledged he
20 obtained a student loan to attend CWU. (Ct. Rec. 37-2, p. 97).
21 While Defendant contends that a genuine issue of fact exists as to
22 whether he executed three promissory notes in 1991, 1992 and 1993,
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24 _____
25 ¹ Defendant has not affirmatively asserted that he did not
26 execute the three promissory notes, only that he cannot remember
27 whether he did. (Ct. Rec. 37-2, Att. A at 33-49). However,
28 Defendant admits that he made regular payments on his student debt
for two years after they entered the repayment period, from
January 1995 to April 1997 (Ct. Rec. 46-3, ¶ 76), and that he
never disputed the information provided to him regarding his
student loans prior to filing for bankruptcy (Ct. Rec. 37-2, Att.
A. at 24-25).

1 for a total amount of \$17,000.00, the evidence demonstrates that
2 Defendant executed the three promissory notes and incurred the
3 obligation to repay the \$17,000.00 loan amount, plus interest.
4 There is no genuine issue for trial with respect to whether
5 Defendant borrowed \$17,000.00 in student loans between 1991 and
6 1993. Accordingly, the undersigned agrees with the findings of
7 Magistrate Judge Weinberg with respect to the student loan debt.
8 Specifically, Defendant has failed to establish that a genuine
9 issue of material fact exists as to whether he executed the three
10 promissory notes.

11 B. Discharge

12 _____Defendant argues that Plaintiff is not entitled to judgment
13 as a matter of law because he provided notice to creditors and was
14 not required to initiate an adversarial proceeding. (Ct. Rec. 69
15 at 6-9). These arguments relate to Defendant's main assertion
16 that he is not obligated to repay the loans because they were
17 discharged in his February 1998 bankruptcy.

18 Based on the totality of the record, as thoroughly discussed
19 in the report and recommendation (See, Ct. Rec. 67 at 11-16), the
20 undersigned judicial officer finds there is no genuine issue that
21 Defendant incurred these student loans and that they were not
22 discharged in his February 1998 bankruptcy. Defendant's student
23 loans were not discharged in bankruptcy; therefore, Plaintiff is
24 entitled to summary judgment.

25 C. Claimed Defenses

26 _____Defendant has asserted multiple defenses to his obligation to
27 repay the student loans. Despite Defendant's objections (Ct. Rec.

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69 at 9-16), it is apparent that the Magistrate Judge appropriately assessed Defendant's claimed defenses to his loan obligation. The undersigned finds that Magistrate Judge Weinberg properly concluded that all defenses raised by Defendant fail to provide justification for defeating Plaintiff's motion for summary judgment, lack validity and are without merit.

D. Conclusion

Having reviewed the report and recommendation (Ct. Rec. 67) and Defendant's objections to the report and recommendation (Ct. Rec. 69), said report and recommendation is **ADOPTED** in its entirety.

IT IS HEREBY ORDERED that Plaintiff's motion for summary judgment (Ct. Rec. 35) is **GRANTED** and **judgment is rendered in favor of Plaintiff and against Defendant for the amounts described below.**

Plaintiff is entitled to the respective principal amounts of \$7,775.11, \$4,193.54, and \$5,631.95, plus interest accruing at respective rates of 10.00% per annum, 6.10% per annum, and 6.10% per annum. (Ct. Rec. 37-5). Defendant is thus indebted to Plaintiff in the principal amount of \$17,600.60, plus interest on the principal, computed at the above per annum rates, in the amount of \$12,663.15, for a total amount of **\$30,263.75** as of March 2, 2007. (Ct. Rec. 37-4, ¶ 13). Defendant is additionally indebted to Plaintiff for the interest thereafter on the principal, at the rates described above, to the date of judgment, plus a \$350.00 filing fee, a \$20.00 docket fee, U.S. Marshal's service fees, and post-judgment interest at the legal rate until paid in full. **Judgment shall be entered accordingly.**

1 In light of the foregoing, **IT IS FURTHER ORDERED** that
2 Defendant's cross-motion for summary judgment (**Ct. Rec. 57**) is
3 **DENIED as moot.**²

4 **IT IS SO ORDERED.** The District Court Executive shall enter
5 judgment accordingly, forward a copy of this order to Defendant
6 and counsel and **close the file.**

7 **DATED** this 27th day of November, 2007.

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9 **s/Fred Van Sickle**

10 UNITED STATES DISTRICT JUDGE
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26 _____
27 ²Since summary judgment has been granted in favor of
28 Plaintiff and the case has been decided in its entirety, the Court
need not address Defendant's pending motion. Defendant's
objection (**Ct. Rec. 69** at 16-20) fails to provide a basis for not
denying his pending motion for summary judgment as moot.